

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jessica Peña	Team: Team # 2	CCRB Case #: 200805057	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/12/2008 12:54 PM	Location of Incident: 8973 Bay Parkway	Precinct: 62	18 Mo. SOL 9/12/2009	EO SOL 9/12/2009	
Date/Time CV Reported Wed, 04/02/2008 8:26 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/09/2008 1:14 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Christop Zaleski	01803	923399	062 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Hagan	23951	933825	062 PCT
2. POM Horacio Maldonado	22375	930737	062 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Christop Zaleski	Abuse: Sergeant Christopher Zaleski stopped the car in which § 87(2)(b) was an occupant.	
B.SGT Christop Zaleski	Force: Sergeant Christopher Zaleski used physical force against § 87(2)(b)	
C.SGT Christop Zaleski	Discourtesy: Sergeant Christopher Zaleski acted rudely toward § 87(2)(b)	
D.SGT Christop Zaleski	Abuse: Sergeant Christopher Zaleski refused to provide his name and shield number to § 87(2)(b)	

Synopsis

On April 3, 2008, § 87(2)(b) filed a complaint with the Internal Affairs Bureau (log # 08-14118) on behalf of her common-law husband, § 87(2)(b). § 87(2)(b) was not a witness to the incident. On March 12, 2008, Sgt. Christopher Zaleski, PO James Hagan and PO Horacio Maldonado approached § 87(2)(b)'s vehicle in the parking lot located at 8793 Bay Parkway in Brooklyn (**Allegation A**). § 87(2)(b) exited the vehicle and then quickly returned back inside his car. Sgt. Zaleski allegedly responded by pulling § 87(2)(b) out of the car, and pulling § 87(2)(b)'s sweatshirt over his head and off of him (**Allegation B**). § 87(2)(b) picked up his sweatshirt off the ground and Sgt. Zaleski allegedly grabbed it from his hands and threw it to the ground, twice (**Allegation C**). § 87(2)(b) asked for Sgt. Zaleski's identification and he allegedly responded by pushing him (**Allegation D and within Allegation B**). § 87(2)(b) was subsequently arrested for § 87(2)(b) which was later recovered from his vehicle.

§ 87(2)(g)

This case was initially assigned to former Investigator Cynthia Williams. Upon her resignation it was assigned to Investigator Brian DeRoberts on August 3, 2008. The closing report was subsequently prepared by Supervising Investigator Jessica Serrano.

Summary of Complaint

§ 87(2)(b) was not a witness to the incident and therefore a formal statement was not obtained. No contact information was provided for § 87(2)(b).

§ 87(2)(b) is a § 87(2)(b) year old black male. He is five feet nine inches tall and weighs 250 pounds. Investigator Williams contacted § 87(2)(b) via phone on April 17, 2008. He was formally interviewed by the CCRB on April 28, 2008 (encl. 7a-e). § 87(2)(g)

On March 12, 2008, at approximately 12:54pm, § 87(2)(b) was parked in a handicap space in the Best Buy parking lot located at 8973 Bay Parkway in Brooklyn. The parking spot was several feet from the entrance to the store. § 87(2)(b) was driving his mother's blue/silver 2005 Pontiac Monteville. § 87(2)(b) intended to purchase a cellular phone and then go straight to work. On this date he wore black jeans, black boots, a dark colored sweatshirt and a black doo-rag covering his hair.

Before entering the store, § 87(2)(b) decided to sit in the driver's seat and call his lawyer. While seated in the vehicle for approximately four minutes, a plainclothes officers, PO1, approached his vehicle. § 87(2)(b) identified PO1 as a sergeant and described him as a white male, approximately five feet nine inches tall and weighing 175 pounds with dirty blonde hair. This officer was subsequently identified via investigation as Sgt. Christopher Zaleski. (During his telephone statement, § 87(2)(b) stated that while in the parking lot, he was approached by four plainclothes officers that passed his vehicle. § 87(2)(b) opened the door and then shut it immediately because he almost struck the officers. Sgt. Zaleski responded by punching the car window. Three additional plainclothes officers walked several feet behind Sgt. Zaleski. Given that § 87(2)(b) was not aware that these were officers, he continued to use his phone.)

Sgt. Zaleski approached the driver's side door and § 87(2)(b) exited his vehicle and was "face to face" with him. Sgt. Zaleski yelled at § 87(2)(b) several times questioning if he knew who he was. (During his phone statement § 87(2)(b) alleged that Sgt. Zaleski stated, "You don't know who the fuck I am?") § 87(2)(b) replied that he did not. Sgt. Zaleski then said to PO3, "Tell them who you are?" PO3 was described as a white male, five feet eleven inches tall with the last name Hagan. This officer was later

identified via arrest paperwork as PO John Hagan. PO Hagan entered his coat pocket and pulled out a black slender item attached to a chain. § 87(2)(b) could not clearly see what the item was due to the manner in which PO Hagan held it. PO Hagan then placed the item back inside his pocket. § 87(2)(b) turned around, and proceeded to sit inside the vehicle. Before § 87(2)(b) had the opportunity to shut the door, Sgt. Zaleski grabbed § 87(2)(b) by the front of his sweatshirt. § 87(2)(b) told Sgt. Zaleski, "If you don't get your hands off my fucking shirt, there's gonna be some shit around here. Do you wanna fight?" § 87(2)(b) then stepped one foot outside of the vehicle and proceeded to exit the vehicle. Sgt. Zaleski told the other officers to assist him in removing § 87(2)(b) from the vehicle. The three officers "gently grabbed" at § 87(2)(b)'s pants, though with not with enough force to physically remove him from the car. Sgt. Zaleski began pulling on § 87(2)(b)'s sweatshirt and eventually § 87(2)(b)'s hood was pulled over his head and both § 87(2)(b)'s hood and shirt, which he wore under the sweatshirt were pulled off his body. When § 87(2)(b) attempted to retrieve his clothing from the ground, Sgt. Zaleski grabbed the clothing out of his hands, two separate times, and threw them on the ground. § 87(2)(b) did not state that his sweatshirt was thrown to the ground during his phone statement. § 87(2)(b) then said to the officers, "Somebody swing. What do you want?" PO Hagan then pulled out his shield and clearly displayed it. § 87(2)(b) reached for the shield and was told by PO Hagan not to touch it. § 87(2)(b) was unable to read PO Hagan's information off of the shield. § 87(2)(b) then requested Sgt. Zaleski's identification. Sgt. Zaleski responded by gently, though continuously, pushing § 87(2)(b) using his entire body to "brush" against him. § 87(2)(b) believed that Sgt. Zaleski was attempting to provoke him into a physical altercation. (During his phone statement § 87(2)(b) stated that he asked the officers to identify themselves. However, he never directly asked for their names and shield numbers because he did not know they were officers until later.)

§ 87(2)(b) eventually picked up his shirt and was subsequently handcuffed. An unidentified male did witness the interaction in the parking lot. An officer radioed for additional units to respond to transport § 87(2)(b). § 87(2)(b) was frisked and searched prior to being placed in the arriving patrol car. § 87(2)(b) stated that he had \$580 dollars in his pocket and following the arrest he only received \$500 dollars back. § 87(2)(b) believes that while in custody his vehicle was searched. He alleged that his mother's trunk was broken and the lock of the trunk was damaged. In addition, a Motorola phone and an old driver's license were missing. (It should be noted that all of this property was located on the property voucher form and thus a referral to the Internal Affairs Bureau was not made).

§ 87(2)(b) was subsequently charged with § 87(2)(b). The officers alleged that they found 320 decks of heroin in his car. § 87(2)(b) denied being in possession of narcotics. § 87(2)(b) was detained for 21 days. § 87(2)(b) later learned that Sgt. Zaleski claimed that § 87(2)(b) kicked him in his groin.

Results of Investigation

Identification of Officers Interviewed

Via the arrest paperwork provided PO John Hagan was identified as the arresting officer (encl. 19). Sergeant Zaleski and PO Horacio Maldonado were identified via the roll call and officer interviews.

Sergeant Christopher Zaleski

Sgt. Christopher Zaleski was interviewed at the CCRB on June 17, 2008 (encl. 11a-b). Sgt. Zaleski worked in plain clothes from 9:00am to 6:00pm on March 12, 2008. Sgt. Zaleski was assigned as the anti-crime sergeant and worked in plainclothes with PO Hagan and PO Maldonado. All officers were assigned to an unmarked Chevy Impala number 8172.

Sgt. Zaleski, Officer Maldonado, and Officer Hagan were on foot, walking in the Best Buy parking lot, issuing summonses when they observed § 87(2)(b)'s vehicle. Sgt. Zaleski was walking ahead of the other officers. As they crossed the street, § 87(2)(b) almost struck Sgt. Zaleski, who had to jump back to avoid being struck.

§ 87(2)(b) immediately stopped his vehicle and kicked open his car door with his foot. All three officers immediately removed their shields from their shirts and identified themselves as officers. § 87(2)(b) never requested that Sgt. Zaleski identify himself. § 87(2)(b) then kicked his leg at Sgt. Zaleski and

attempted to strike him. § 87(2)(b) did not make contact. § 87(2)(b) seemed very upset and the officers requested that he calm down and that he provide his paperwork. Sgt. Zaleski stated that § 87(2)(b) was now stopped given that he almost struck him and was acting erratic. § 87(2)(b) then exited the vehicle and asked, "Do you want to fucking fight?" § 87(2)(b) flailed his arms, ripped off his shirt, and again asked, "Do you wanna fight?" The officers continuously asked § 87(2)(b) to calm down and asked for his license and registration several times. Sgt. Zaleski told § 87(2)(b) that based on his behavior, they were going to bring him to the stationhouse and issue him a summons for disorderly conduct. § 87(2)(b) was placed in handcuffs, which seemed to calm him down. An officer did search § 87(2)(b) but did not recover any contraband. Another unit arrived to the scene, and transported § 87(2)(b) to the 62nd Precinct.

After § 87(2)(b) was brought to the precinct, Sgt. Zaleski observed heroin in plain view on the center console of § 87(2)(b)'s vehicle. § 87(2)(b) was subsequently charged with § 87(2)(b).

At no point during the incident did he or any officer at the scene grab § 87(2)(b) by the front of his sweatshirt, grab at his legs, or push him. No physical force was used against § 87(2)(b). Sgt. Zaleski denied removing § 87(2)(b)'s shirt or throwing it to the ground. In regard to the arrest report, Sgt. Zaleski was not aware of § 87(2)(b) speaking on his cell phone during while driving.

Officer John Hagan

PO Hagan prepared the complaint report related to this incident (encl. 14a-b). The reported noted that PO Hagan observed § 87(2)(b) operating a motor vehicle while on his cell phone. § 87(2)(b) exited the vehicle and was irate. While attempting to handcuff him, § 87(2)(b) flailed his arms. A search incident to a lawful arrest produced a quantity of a controlled substance. The arrest report noted the same narrative (encl. 15a-b). The charges included criminal § 87(2)(b).

PO Hagan was interviewed at the CCRB on June 24, 2008 (encl. 10a-d). Officer Hagan worked in uniform from 10:00am to 6:00pm on March 12, 2008. Officer Hagan was assigned to the burglary apprehension team and worked with Sgt. Zaleski and PO Maldonado. All officers were in plainclothes and assigned to unmarked vehicle number 8172. PO Hagan's memo book noted the arrest and processing of § 87(2)(b).

On March 12, 2008, at approximately 12:54pm, PO Hagan, PO Maldonado and Sgt. Zaleski were walking in the parking lot. PO Hagan observed § 87(2)(b) make a left turn and almost strike Sgt. Zaleski. § 87(2)(b) was using his cell phone while operating the vehicle. § 87(2)(b) rolled down his window and asked Sgt. Zaleski if he wanted to fight. The officers all presented their shields to § 87(2)(b) and identified themselves as officers. The officers then asked § 87(2)(b) to calm down. § 87(2)(b) replied that he did not care that they were officers. § 87(2)(b) then proceeded to kick the door open. As § 87(2)(b) exited the car, he attempted to kick at Sgt. Zaleski, who was standing several feet away. PO Hagan was not certain if § 87(2)(b) made contact with Sgt. Zaleski. § 87(2)(b) then exited his vehicle, took off his shirt and said, "Yeah, I'll fight you. I don't give a fuck if you're the cops." It was at this point that Sgt. Zaleski decided to place § 87(2)(b) under arrest. The officers informed § 87(2)(b) that he was being placed under arrest and asked him several more times to calm down. § 87(2)(b) was compliant with being handcuffed and no force was necessary to place him under arrest. An officer did frisk and search § 87(2)(b). Additional units responded within minutes and transported § 87(2)(b) to the 62nd Precinct.

Sgt. Zaleski drove § 87(2)(b)'s car back to the stationhouse. At the stationhouse, Sgt. Zaleski found bags of heroin on the center console. PO Hagan denied that he or the other officers grabbed § 87(2)(b)'s sweatshirt, legs, or pushed him. None of the officers threw § 87(2)(b)'s sweatshirt to the ground.

Officer Horacio Maldonado

PO Maldonado was interviewed at the CCRB on July 28, 2008 (encl. 12a-c). PO Maldonado worked in uniform from 9:30am to 6:00pm on March 12, 2008. Officer Maldonado was assigned to work anti-crime, with PO Hagan and Sgt. Zaleski. All officers worked in plainclothes and drove an unmarked Chevy Impala, 8172. PO Maldonado did not have any entries in his memo book regarding this incident.

On March 12, 2008, PO Maldonado and his partners were assigned to patrol the parking lot in an attempt to prevent crime car theft and property damage. As they patrolled, a vehicle almost collided into Sgt. Zaleski, who had to back up to avoid being hit. § 87(2)(b) rolled down the window and screamed at

Sgt. Zaleski, "Get the fuck out of the way. Why are you hitting my car for?" Sgt. Zaleski identified himself by pulling out his shield. PO Hagan and PO Maldonado then also pulled out their shields. Sgt. Zaleski asked § 87(2)(b) for his paperwork and § 87(2)(b) responded, "Do you wanna fight?" § 87(2)(b) then opened the door and attempted to hit Sgt. Zaleski. Sgt. Zaleski grabbed the door. § 87(2)(b) while still seated in the vehicle, turned his body, extended his legs and began to kick at Sgt. Zaleski. Sgt. Zaleski backed away and avoided contact. § 87(2)(b) then exited the vehicle, ripped off his shirt, threw it on the ground and said, "I don't care. I'll fight every one of you." At the time, PO Maldonado was standing near the back passenger door and PO Hagan was at the back driver's seat door. Sgt. Zaleski decided to place § 87(2)(b) under arrest due to his behavior. The officers informed § 87(2)(b) that he was under arrest for disorderly conduct and attempting to assault a police officer. § 87(2)(b) then became compliant. A unit was called for transport and § 87(2)(b) was taken to the precinct. PO Maldonado was later informed that heroin was recovered in § 87(2)(b)'s vehicle.

Had § 87(2)(b) not almost strike Sgt. Zaleski with his vehicle, the officers would have not stopped him. At no point during the incident did PO Maldonado or any officer at the scene grab § 87(2)(b) by the front of his sweatshirt, legs, or push him. None of the officers removed § 87(2)(b)'s shirt and threw it on the ground.

Officers not interviewed

§ 87(2)(b) stated that there were four officers that approached his vehicle. § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Police Documents

§ 87(2)(b)'s arrest photo does not depict any facial injuries (encl. 9). The SPRINT report (encl. 13) in relation to this incident, job number W06181, notes that at 12:54pm a sergeant radioed to Central an arrest at 8973 Bay Parkway. At 12:58, an additional unit was called to transport the prisoner. PO Hagan vouchered the following property in regard to this arrest: 320 decks of heroin, \$584 dollars, a Motorola phone and battery. The command log noted that § 87(2)(b) was logged in at 1:10pm (encl. 17). His physical condition was normal. The roll call confirmed that PO Hagan and PO Maldonado were assigned to conditions (encl. 18a-g). PO Louro was also assigned to conditions. Sgt. Zaleski was assigned to temporary intelligence.

The criminal court complaint report noted that § 87(2)(b) was driving his vehicle while speaking on a cell phone (encl. 8a-b). § 87(2)(b) was observed making a turn at a fast pace and almost struck Sgt. Zaleski. When exiting his vehicle, § 87(2)(b) asked Sgt. Zaleski if he wanted to fight. Sgt. Zaleski identified himself to § 87(2)(b) and instructed him to calm down. § 87(2)(b) refused to calm down and attempted to kick Sgt. Zaleski.

Record of Criminal Convictions

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Civilian and Officer CCRB History

This is the first complaint filed by § 87(2)(b) (encl. 1). § 87(2)(b) has no prior complaints filed and has not been a victim in any other complaint (encl. 2). Sgt. Zaleski has no prior substantiated cases during his ten-year tenure with the NYPD (encl. 3).

Conclusions and Recommendations

Subject Officer Identification

§ 87(2)(g)

§ 87(2)(b) also alleged that Sgt. Zaleski grabbed his sweatshirt, pushed him and threw his sweatshirt on the ground, twice. § 87(2)(g)

§ 87(2)(b) also alleged that he requested Sgt. Zaleski's identification and he responded by pushing him. § 87(2)(g)

Undisputed Facts

It is undisputed that § 87(2)(b) was in the parking lot of 8973 Bay Parkway when he had an altercation with officers. § 87(2)(b) did exit his vehicle and asked Sgt. Zaleski if he wanted to fight. § 87(2)(b)'s sweatshirt did come off at some point during the incident. § 87(2)(b) was subsequently arrested and charged with criminal possession of a controlled substance.

Disputed Facts

§ 87(2)(f)

§ 87(2)(f)

§ 87(2)(f)

§ 87(2)(f)

§ 87(2)(f)

Assessment of the Evidence

§ 87(2)(g)

During his phone interview on April 17, 2008, § 87(2)(b) stated that he was in the parking lot when four officers passed his car. § 87(2)(b) admitted to opening his door and then shutting it immediately after he almost hit the officers. However, this statement does not corroborate the statement provided in his official interview that his vehicle was stationary and he was on the phone with his lawyer when Sgt. Zaleski approached him. § 87(2)(b)'s phone statement supports the officers' testimony that he almost struck Sgt. Zaleski, which precipitated the stop. The fact that § 87(2)(b) stated that he was on the phone speaking to his lawyer, supports PO Hagan's testimony that he was operating the vehicle while on the phone. § 87(2)(g)

During his phone statement, § 87(2)(b) claimed that Sgt. Zaleski grabbed his sweatshirt and never made any allegations of being pushed. § 87(2)(b) stated that he was grabbed after he reentered his vehicle. However, during his official statement, § 87(2)(b) stated that Sgt. Zaleski grabbed his sweatshirt and then instructed the other officers to remove him from the vehicle. Sgt. Zaleski was then able to pull § 87(2)(b)'s sweatshirt over his head. He also claimed of being pushed by the sergeant, which § 87(2)(b) believed was to provoke him into a fight. None of the officers admitted that Sgt. Zaleski pushed § 87(2)(b) or pulled him from the vehicle. Furthermore, all officers stated that it was § 87(2)(b) that removed his sweatshirt and then verbally threatened Sgt. Zaleski to a fight. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) regarding whether Sgt. Zaleski threw his sweatshirt to the ground. § 87(2)(b) failed to mention this action during his telephone statement, but later made the allegation when he was formally interviewed. None of the officers confirmed that this occurred. § 87(2)(g)

§ 87(2)(g)

During his phone statement § 87(2)(b) stated that he asked all the officers to provide identification. He then stated that he never directly asked the officers for their names and shield numbers. He did state in his telephone statement that the initial officer, presumably Sgt. Zaleski, revealed a shield

from his pocket. However, during his official testimony, § 87(2)(b) only stated that he requested Sgt. Zaleski's identification. He added that PO Hagan removed a chain from his clothing, which PO Hagan confirmed was his shield. None of the officers stated that they were asked for identification, and instead testified that they voluntarily removed their shields when § 87(2)(b) was first stopped. § 87(2)(g)

§ 87(2)(g) During his initial statement § 87(2)(b) stated that Sgt. Zaleski asked him, "You don't know who the fuck I am." However, § 87(2)(b) never made any profanity allegations during his official interview. In addition, § 87(2)(b) never stated during his phone statement that Sgt. Zaleski threw his sweatshirt to the ground, though made this allegation during his official interview. § 87(2)(g)

Allegations Not Pleaded

§ 87(2)(g)

Allegation A: Sergeant Christopher Zaleski stopped the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(g)

Allegation B: Sergeant Christopher Zaleski used physical force against § 87(2)(b)

§ 87(2)(g)

Allegation C: Sergeant Christopher Zaleski acted rudely toward § 87(2)(b)

Allegation D: Sergeant Christopher Zaleski refused to provide his name and shield number to

§ 87(2)(b)
§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: